APPENDIX A - MEMORANDUM

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[Filed March 29, 1995]

MARJORIE STURGIS,

Plaintiff-Appellant,

v.

JEFFERSON K. LOGAN; E. JEFFREY GRUBE; ROBERT MOULTON; MARK SOLOMON,

Defendant-Appellee.

No. 94-56289

D.C. No. CV-94-02982-JGD

-AND-

MARJORIE STURGIS,

Plaintiff-Appellant,

v.

UNIVERSITY OF SOUTHERN CALIFORNIA, Administered by Employers Insurance of Wausau; Jacobs and Solomon,

Defendants-Appellees.

APPENDIX A

No. 94-56312
D.C. No. CV-93-05716-JGD

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John G. Davies, District Judge, Presiding

Submitted March 21, 1995**
Before: SNEED, POOLE, and BRUNETTI, Circuit Judges

In these consolidated appeals, Marjorie Sturgis appeals pro se the district court's dismissal with prejudice of her two actions pursuant to 42 U.S.C. § 1983. In the first action (Sturgis I), Sturgis alleged that her petition to reopen he workers compensation case was denied due to a conspiracy by her former

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

employer, the University of Southern California; the University's insurer, Employers Insurance of Wausau; the University's lawyers; and the Workers Compensation Appeals Board of the State of California. In the second action (Sturgis II), Sturgis alleged that the conduct of defense attorneys in Sturgis I, the district court ordered her to show cause why both actions should not be dismissed. In her written response, Sturgis stated that the court "may dismiss" both actions. The district court proceeded to dismiss both actions with prejudice.

We reject the argument that Sturgis waived her right to appeal by consenting to dismissal. It is not clear from the record that Sturgis consented to dismissal with prejudice. We therefore cannot say that the dismissal with prejudice did not constitute an adverse judgment. Compare Seidman v. City of Beverly Hills, 785 f.3d 1447, 1448 (9th Cir. 1986) (this court lacked jurisdiction where appellant agreed to dismiss the action with prejudice).

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We conclude, nevertheless, that the district court did not abuse its discretion in dismissing both actions with prejudice. See Koch v. Hankins, 8 FT. 3d 650, 652 (9th Cir. 1993) ("district court's determination of the terms and conditions of dismissal under Fed. R. Civ. P. 41(a) (2) [voluntary dismissal with court approval] is reviewed for abuse of discretion"); Wet Coast Theater Corp. V. City of Portland, 897 F.2d 1519, 1523 (9th Cir. 1990) (dismissal for lack of prosecution reviewed for abuse of discretion). Sturgis failed to appear at a July 11, 1994 hearing on (1) an order to show cause why Sturgis I should not be dismissed for her failure to act in good faith,[1] and (2) a motion to dismiss Sturgis II pursuant to Fed. R. Civ. P. 12(b) (6). After Sturgis failed to appear, the district court issued another order to show cause in each action warning of dismissal.

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[1] The district court issued the order to show cause based on Sturgis' having charged the court-appointed discovery referee with bias and having threatened to file a criminal complaint against the defendant and possibly the referee.

APPENDIX A

In both orders to show cause, the district court ordered Sturgis to explain her failure to appear at the July 11, 1994 hearing. In the order to show cause in Sturgis I, the district court ordered her to show cause, as well, for her non-cooperation in the scheduling of her deposition. In her response, Sturgis offered no excuse for her failure to appear at the July 11, 1994 hearing. In fact, she stated that the court may dismiss both actions. As to the deposition, Sturgis stated that she did nor refuse to undergo depositions and that:

> All of the defense attorneys were "pressing" to depose the Plaintiff under what appeared to be, and still appears to be, concerted, conspiratorial conditions and processes, and calculated to harass and intimidate whereas to force her to answer incriminatory questions under "color of law," and would have the effect of compelling the plaintiff to be a witness against herself at time of

trial.

In these circumstances, we cannot say that the district court abused its discretion in concluding that the public policy favoring disposition on the merits was outweighed by Sturgis' dilatory conduct, the court's need to manage its docket, the public's interest in expeditious resolution of litigation, the prejudice to the defendants from Sturgis' conduct, the warnings given to Sturgis, and Sturgis' request that the court dismiss her cases. See Hamilton v. Neptune Orient Lines, Lts., 811 F.2d 498, 499 (9th Cir. 1987) (setting forth factors the district court should consider before dismissing a case for failure to prosecute); Thompson v. Housing authority, 782 F.2d 829, 831 (9th Cir.), cert. denied, 479 U.S. 829 (1986) (setting forth factors the district court should consider before dismissing for failure to comply with a court order).

Nor did the district court abuse its discretion in refusing

to enter default judgments against the defendants because the district court could have had serious reservations about the merits of the complaints. See Eitel v. McCool, 782 F. 2d 1470, 1471-1472 (9th Cir. 1986) (Defendants' failure to satisfy technical requirements does not mandate entry of default judgment; district court, in its discretion, can consider, inter alia, the sufficiency of the complaint and the merits of plaintiffs' claims).

Affirmed.

APPENDIX B

UNITED STATES .DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed and Entered July 28, 1994]

MARJORIE STURGIS,
Plaintiff,

CASE NO. CV 93-5716 JGD

v.

UNIVERSITY OF SOUTHERN CALIFORNIA - ADMINISTERED BY EMPLOYERS INSURANCE OF WAUSAU, ET AL.,

Defendants.

ORDER OF DISMISSAL

In response to the Court's order to show cause why this action should not be dismissed, the plaintiff filed a request for dismissal. Therefore, this action is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: July 26, 1994

/s/ John G. Davies

United States District Judge

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APPENDIX C

EXCERPTS FROM
PLAINTIFF'S AMENDED COMPLAINTS
(December 10, 1993)

CAUSES OF ACTION
FACTUAL ALLEGATIONS:

That having had good cause, the Workers Compensation case was reopened on February 6, 1989.

On June 27, 1992, the plaintiff aggrieved because the case had been subjected to numerous continuances and postponements by the Workers Compensation judge, wrote a letter to the Workers Compensation Appeals Board Administrative Director in an endeavor to try and get the claim resolved.

On or about July 30, 1992, the plaintiff received a notice stating that the case had been set for trial on August 12, 1992.

On the August 12, 1992 trial day, Judge Nakagawa, instead of proceeding with a usual and customary court procedure, circulated the subject letter to the defense attorney, Mark Solomon. The defense attorney referred to the letter as

being "clout" and that it could be used to appeal the decision made in the case. Judge Nakagawa then proceeded to admonish, reprimand and demand that the plaintiff recant and deny the subject letter contents. The plaintiff refused.

Along with admonishing and reprimanding the plaintiff, Judge Nakagawa threatened to withdraw from the case if the plaintiff did not renounce the letter. The plaintiff, overwhelmed by such unconscionable, shocking actions, began to cry uncontrollably. Everyone left the court room.

Plaintiff had assumed that the trial for the day was over, but after a short while, everyone returned to the court room. Again, Judge Nakagawa proceeded to admonish, reprimand and to make threats of withdrawing from the case if the plaintiff did not renounce the letter. Again, the plaintiff refused and Judge Nakagawa announced that he was withdrawing from the case and abruptly left the courtroom.

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Also, during those times, it appeared that there may have been a loss obliteration and/or re-arrangement of evidence by the flagrant use of "off the record" by the judge to the court reporter, probably making it difficult to establish the true circumstances of the "trial" on that day.

On the same day, shortly after the judge withdrew from the case, the defense attorney, Mark Solomon took the subject letter along with the plaintiff's file and gave both to Judge Reyna and asked him to hear the case. Judge Reyna wanted to hear the case right away, but the defense attorney indicated that he had another appointment and could not stay for the trial, subsequently, the trial day was reset for September 14, 1992.

On August 17, 1992, the plaintiff wrote a letter to the Workers Compensation Appeals Board Administrative Director informing him of the events that took place on the August 12, 1992 "trial day." A reply was never received regarding the letter.

On the September 14, 1992 trial day, before going on

record, Judge Reyna indicated that there was no need to go into detail of the case because there w enough information to make a decision. During the trial by employing relentless baiting, badgering, plucking and blending tactics, the defense attorney had the plaintiff to divulge irrelevant aspects of personal matters for no purpose other than to intimidate and to humiliate the plaintiff. Also, the plaintiff was further intimidated with under current threats of fraud and perjury by the workers compensation judge and the defense attorney for having reopened the case. Also, supportive medical evidence was unconscionably down-played or completely ignored and such evidence may have been purged from the Workers Compensation Appeals Board files.

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

[Filed and Entered February 4, 1994]

[THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77 (d)]

MARJORIE STURGIS,

PLAINTIFF,

V.

UNIVERSITY OF SOUTHERN CALIFORNIA-ADMINISTERED BY EMPLOYERS' INSURANCE OF WAUSAU; JACOBS & SOLOMON (ATTORNEYS OF RECORD) AND WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA,

DEFENDANTS.

CASE NO. CV 93-5716

ORDER GRANTING IN PART DEFENDANT USC'S MOTION TO DISMISS AND DENYING THE MOTIONS TO DISMISS OF DEFENDANTS JACOBS & SOLOMON AND EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN

APPENDIX D

On January 31, 1994, the Court heard argument on motions to dismiss filed by defendants University of Southern California (USC), Jacobs & Solomon and Employers Mutual Liability Insurance Company of Wausau (Wausau). After reviewing the written submissions of the parties and the oral arguments of counsel, the Court hereby GRANTS IN PART USC's motion and DENIES the motions of Wausau and Jacobs & Solomon.

FACTS

On September 21, 1993, plaintiff Marjorie Sturgis filed this civil rights action against defendants USC, Wausau, Jacobs & Solomon, and the Workers Compensation Appeals Board of the State of California (WCAB).

The case arises from a workplace injury which the plaintiff suffered while employed by USC in 1984. [See Amended Complaint, Ex. 1]. The plaintiff first filed an application for state workers compensation benefits on or about May 10, 1984. On

November 30, 1987, she received a benefits award. Thereafter, the plaintiff filed a petition to reopen her claim with the WCAB. Jacobs & Solomon represented USC during the proceedings. The WCAB denied the petition on September 30, 1992.

In this action, the plaintiff contends that a Jacobs & Solomon attorney Mark Solomon, conspired with two WCAB judges during the hearings on her petition to reopen, thereby depriving her of various constitutional rights.

USC, Wausau and Jacobs & Solomon moved to dismiss the Complaint. On December 6, 1993, the Court granted the motion with leave to amend, finding that the Complaint was so lengthy and confusing that it did not comply with the requirements of Fed.R.Civ.P.8.

The plaintiff filed her Amended Complaint on December 10, 1993. The Amended Complaint states that the action is brought under 42 U.S.C. §§ 1983 and 1985 based on underlying violations of the First, Fifth, Eighth and Fourteenth Amendments

to the United States Constitution. Defendants Wausau, Jacobs & Solomon and USC again move to dismiss.

Wausau argues that the Court lacks subject matter jurisdiction because this action is, in essence, a claim for workers' compensation benefits, not a federal question. It also moves to dismiss the claim for punitive damages on the grounds that California Civil Code § 3294 requires more specific pleading.

Jacobs & Solomon, appearing pro se, makes the same subject matter jurisdiction argument as does Wausau. Further, it argues that the Amended Complaint fails to allege sufficient facts to establish a conspiracy between it and the WCAB judges, and contends that it cannot have conspired with the judges since they enjoy immunity.

USC moves to dismiss the § 1983 and § 1985 claims for failure to state a claim. First, USC argues that it can only be liable as an institution under a Monell theory and the Amended Complaint does not allege that USC had a policy or custom of

unlawfully interfering in workers compensation proceedings. Second, it argues that the alleged conspiracy between attorney Solomon and the WCAB judges is not pled with adequate specificity. Third, with respect to the § 1985 claim only, USC contends that the complaint fails to allege a class-based animus on the part of any defendant.

DISCUSSION

A. Subject Matter Jurisdiction

The jurisdictional attack raised by Wausau and Jacobs & Solomon must be addressed at the outset. Both parties argue, in essence, that this is a workers compensation case masquerading as a constitutional tort. Wausau P&A at 3-6; Jacobs & Solomon P&A at 8.

When a defendant challenges subject matter jurisdiction, the plaintiff bears the burden of proof. Stock West, Inc. V. Confederated Tribes, 873 F.2d 1221, 1225 (8th Cir. 1989). The allegations in the complaint are taken as true where, as here, a

12(b) (1) motion is based solely on the face of the complaint. Schwarzer, Wallace & Tashima, Federal Civil Procedure Before Trial § 9:84 (1993).

The Amended Complaint states that jurisdiction is invoked pursuant to 28 U.S.C. § 1343 and that the action is brought under 42 U.S.C. §§ 1983 and 1985. Amd. Complt., para.2. Subsections (a)(1) - (a)(3) of section 1343 give the district courts jurisdiction for claims brought under sections 1983 and 1985. Although the action arises from workers compensation proceedings, the constitutional injury alleged is an independent one: a conspiracy between WCAB judges and attorney Mark Solomon to deprive the plaintiff of her rights. Thus, the Amended Complaint clearly demonstrates that the Court has subject matter jurisdiction.

B. Wausau's Motion

Wausau makes one argument other than the absence of

subject matter jurisdiction. It contends that the plaintiff's claim for punitive damages should be dismissed because Cal. Civ. Code § 3294 requires specificity in pleading claims for punitive damages against corporations. P&A at 6-8. This contention is patently invalid since the availability of punitive damages is a question of federal law. Wausau's motion is therefore denied.

C. Jacobs & Solomon's Motions

The Court encounters two initial difficulties in considering this motion. First, there is a question of proper service. The proof of service indicates that the motion was mailed to the plaintiff at an address on 78th Street in Inglewood, while the plaintiff consistently has used an address on Western Avenue in Los Angeles. Second, the instant motion states that Jacobs & Solomon appears pro se. Under Local Rule 2.9, neither a corporation nor an unincorporated association may appear pro se. Thus, while attorneys Jacobs and/or Solomon can represent the

firm, the firm cannot represent itself.

On the merits, the motion is not meritorious. Jacobs & Solomon argues that it cannot have conspired with WCAB judges because of judicial immunity. P&A at 11. This contention is legally frivolous. In Dennis v. Sparks, 449 U.S. 24 (1980), the plaintiff brought a § 1983 action against a state court judge and private parties who allegedly conspired with the judge. The Supreme Court stated:

> here the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence that the judge himself is immune from liability. Immunity does not change the character of the judge's action or that of his co-conspirators.

Id. at 28.

Jacobs & Solomon cites Dennis for the basic proposition that "merely resorting to the courts and being on the winning side

of a lawsuit does not make a party a co-conspirator or a joint actor with the Judge," but fails to recognize that the holding of Dennis defeats its immunity argument. This misreading of Dennis is a glaring error and probably worthy of sanctions under Fed.R.Civ.P. 11, a point the Court may revisit later in these proceedings.

Jacobs & Solomon's other argument is that the Amended Complaint fails to plead the conspiracy between Solomon and the WCAB judges with adequate specificity. Since USC also makes this argument and does so more thoroughly, it will be addressed in the following section.

D. USC's Motion

1. The Standard

The Ninth Circuit's position on motions to dismiss pursuant to Rule 12(b) (6) is as follows:

'A complaint should not be dismissed for failure

> to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.' Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957). All allegations of material fact are taken as true and construed in the light most favorable to the non-moving party.

Hall v. City of Santa Barbara, 813 F. 2d 198, 201, n.9 (9th Cir. 1986), cert. denied, 485 U.S. 940 (1988). It "is axiomatic that the motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." Id. Additionally, it is well established that the allegations in a pro se complaint must be treated with particular liberality. Hughes v. Rowe, 449 U.S. 5, 9 (1980) (per curiam).

2. The 42 U.S.C. § 1985 Claim and Class-Based Animus

Section 1985 contains several discrete provisions. The Ninth Circuit has summarized them as follows:

Section 1985(1) concerns preventing an officer of the United States from performing his or her duties. The first clause of section 1985(2) concerns conspiracy to obstruct justice in the federal courts, or to intimidate a party, witness or juror in connection therewith. The second clause of § 1985(2) provides a cause of action if:

> two or more persons conspire for the purpose of impending, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for unlawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

The first clause of § 1985(3) provides a cause of action for a private conspiracy to deny equal protection of the laws. The second clause of § 198 (3) provides a cause of action for conspiracy:

> for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws.

The third clause of § 1985(3) provides a cause of action for a conspiracy to interfere with federal elections.

Bretz v. Kelman, 773 F.2d 1026, 1029 n. 3 (9th Cir. 1985) (en

banc).

The Amended Complaint does not specify what provisions of § 1985 is at issue. Since there is no charge of wrongdoing related to a federal forum or authorities, the claim cannot be made under § 1985(), the first clause of § 1985(2) or the third clause of § 1985(3).

With the exception of claims under the first clause of § 1985(2), § 1985 claims require an allegation of class-based discriminatory animus. Zemsky v. City of New York, 821 F.2d 148, 151 and n.2 (2d Cir. 1987); see also Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753, 765 (1993) (second clause of § 1985 (3) "would seem" to require class-based animus); Kush v. Rutledge, 460 U.S. 719 (1983) (first clause of § 1985 (2)); Bretz, 773 F.2d at 1030 (second clause of § 1985(2) requires class-based animus).

The Amended Complaint contains absolutely no allegation of class-based animus. At oral argument, the Court asked the

plaintiff if she was a victim of class-based animus and she replied in the negative. Accordingly, the Court dismisses the § 1985 claim with respect to all defendants, without leave to amend.

3. Monell Liability of Private Entities

USC argues that it can only be liable to the plaintiff on her § 1983 claim under Monell v. Dept. of Social Services, 436 U.S. 658 (1978). That case limited the § 1983 liability of local government entities to acts committed pursuant OT an official policy or custom.

As USC correctly contends, the Courts of Appeal have extended the Monell theory of liability to private entities charged with the acts of their agents, rejecting the applicability of respondeat superior. See, e.g., Sanders v. Sears, Roebuck & Co., 984 F.2d 972 (8th Cir. 1993); Rojas v. Alexander's Dept. Store, Inc., 924 F.2d 406, 408 (2d Cir. 1990), cert. denied, 112 S. Ct. 52 (1991); DeVargas v. Mason & Hanger-Silas Mason Co., 844

F.2d 714, 723 (10th Cir. 1988). Although there apparently is no Ninth Circuit opinion on point, the Court finds these cases persuasive. USC's liability must therefore be analyzed under Monell.

The Ninth Circuit recently provided a comprehensive statement of the bases of Monell liability:

> A section 1983 plaintiff may establish municipal liability in one of three ways. First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity." Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737, 109 s. Ct. 2702, 105 L. Ed. 2d 598 (1989) (Jett) (internal quotation omitted); accord Monell, 436 U.S. at 690-91. Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with "final policy-making authority" and that the challenged action itself thus constituted an act of official governmental policy. See Pembaur v. City of Cincinnati, 475 U.S. 469, 480-481, 89 L. Ed. 2d 452, 106 S. Ct. 1292 (1986) (Pembaur); McKinley v. City of Elroy, 705 F.2d 1110, 1116 (9th Cir. 1983) Whether a particular official has final policy-making authority is a question of state

> law. See Jett, 491 U.S. at 737; City of St. Louis v. Praprotnik, 485 U.S. 112, 123-24, 99 L. Ed. 2d 107, 108 S. Ct. 915 (1988) (plurality opinion) (Praprotnik). Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it. See Praprotnik, 485 U.S. at 127; Hammond v. County of Madera, 859 F.2d 797, 801-02 (9th Cir. 1988) (Hammond).

Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992), cert. Denied, 114. S. Ct. 345 (1993).

The Amended Complaint alleges that attorney Mark Solomon conspired with the WCAB judges. Solomon is repeatedly identified as "employed" by the University of Southern California, which is "administered by Wausau. Amd. Complt., paras. 6, 21, 22, and 23. Thus, construing the complaint liberally, Solomon can be considered an agent of all three private party defendants: Jacobs & Solomon, Wausau and USC.

Paragraph 25 of the Amended Complaint alleges that the WCAB, USC and Wausau are "responsible because of their

authorization and ratification" of the "acts of their agents, employees, [and] servants." The allegation of ratification, albeit unlikely, is sufficient to state a claim for Monell liability under the third (ratification) prong in Gillette. There may also be liability under the second (action by a policy maker) prong of Gillette. The plaintiff would have to prove that Solomon had final policymaking authority for the private entity defendants.

Thus, construing the Amended Complaint in her favor, the plaintiff has stated a valid Monell claim with respect to USC.

4. The Adequacy of the Conspiracy Allegations

USC argues that the § 1983 claim is deficient because the conspiracy between Solomon and the WCAB judges is not pled with enough specificity.

The conspiracy element is essential to this § 1983 claim. While normally only state officials are liable, private parties may act under color of law where there is "significant state

involvement" in their action. Lopez v. Dept. of Health Services 939 F.2d 881, 883 (9th Cir. 1991) (quoting Howerton v. Gabica, 708 F.2d 380 (9th Cir. 1983). The Supreme Court has articulated a number of tests to determine when the state's involvement is "significant." Under the governmental nexus test, a private party acts under color of law if "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be treated as that of the state itself." Id. (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351, 95 S. Ct. 449, 453, 42 L.Ed.2d 477 (1974). Under the joint action test, a private party acts under color of law if "he is a willful participant in joint action with the State or its agents." Id. (quoting Dennis v. Sparks, 449 U.S. 24, 27, 101 S. Ct. 183, 186, 66 L.Ed. 2d 185 (1980)).

The Ninth Circuit has stated that claims under the Civil Rights Act, which includes § 1983 claims, cannot consist merely of "conclusionary allegations, unsupported by facts." Sherman v.

Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977). Rather, the complaint must "allege with some degree of particularity overt acts which defendants engaged in" that support the plaintiff's claim. Id. Hence, while the determination of whether a defendant was acting under color of state law is "fact bound" and should not be resolved with undue haste, "a defendant is entitled to more than the bald legal conclusion that there was action under color of state law." Price v. State of Hawaii, 939 F.2d 702, 708 (9th Cir. 1991).

The Court finds that there are adequate allegations of conspiracy to withstand the motion to dismiss. The Amended Complaint describes events at two specific court proceedings and includes factual details supporting the existence of a collusive relationship between Solomon and the WCAB judges. For example, at the hearing on September 14, 1992, Judge Reyna and Solomon both threatened the plaintiff with fraud and perjury. Amended Complaint, para. 16.

APPENDIX D

Conclusion

For reasons discussed above , the Court hereby dismisses the plaintiff's claim under 42 U.S.C. § 1985 with respect to all defendants without leave to amend. Defendants' motions in all other respects are denied.

IT IS SO ORDERED.

Dated: February 2, 1994.

/s/ John G. Davies
United States District Judge